IN THE

United States

Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

Henry W. Crumrine et al.,
Plaintiffs in Error,
vs.
United States of America,
Defendants in Error.

Roy W. Canaga et al.,
Plaintiffs in Error,
vs.
United States of America,
Defendants in Error.

REPLY BRIEF OF PLAINTIFFS IN ERROR.

DAVIS, RUSH & MACDONALD,
ALLISON & DICKSON,
Attorneys for Plaintiffs in Error.

PARKER & STONE CO., Law Printers, 232 New High St., Los Angeles, Cal.

IN THE

United States

Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

Henry W. Crumrine et al.,
Plaintiffs in Error,
vs.
United States of America,
Defendants in Error.

Roy W. Canaga et al.,
Plaintiffs in Error,
vs.
United States of America,
Defendants in Error.

REPLY BRIEF OF PLAINTIFFS IN ERROR.

In preparing the opening brief we anticipated that the defendant in error must of necessity, hold that the defendants Henry W. Crumrine, William F. Fannon, Clyde H. Isrig, O. T. LeFever and A. N. Miller were indicted under the act known as the "Lever Act" and particularly section 4 of said act (Open. Br. p. 5) and no other section of said act. Inadvertently on page 6 of the opening brief we added section 9 of said act.

On page 6 of the brief of the defendant in error we find these words:

"This indictment clearly follows the terms and provisions of section 9 of the Act of August 10, 1917, * * *." "This indictment is not affected by the Cohen decision, inasmuch as that decision was founded upon a construction of section 4 of the 'Lever Act' as amended Oct. 22, 1919."

On page 12 of the brief it is contended by the opposing side, after a discussion of the Cohen case, *supra*, that:

"The court will note that this is a quotation from section 4 of the act and does not include any of the language of the act that applies to the violation at bar. The decision, therefore, cannot be construed to foreclose prosecutions under section 9, etc."

And again on page 15 of said brief, the defendant in error dismisses our discussion of the subject under "B" with the statement which reads:

"But this argument and these authorities are not strictly in point here for the reason that section 9 of the act contains none of the exceptions complained of by appellant."

We have from the beginning been under the impression that the defendants were indicted under section 9 of said act, but not being sure, we prepared our brief on the theory that they were indicted under section 4 of said act, but respondent by its admission and contention has removed any uncertainty, and we are now convinced that the defendants were indicted under section 9 of the Act of Congress of Aug. 10, 1917. (Respondent's Brief, p. 6).

Therefore the defendants are charged with committing an offense on or about the 6th day of April, A. D. 1920 in violation of a section of an Act of Congress, which section was repealed long before the alleged offense was committed.

Act of Oct. 22, 1919, Ch. 80, 41 Stat. L. 297:

> "Sec. 3 (Certain Sections of Original Act Repealed). That sections 8 and 9 of the act entitled 'An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," approved Aug. 10, 1917 be, and the same are hereby repealed: *Provided,* that any offense committed in violence of said sections 8 and 9 prior to the passage of this act, may be prosecuted and the penalties prescribed therein enforced in the same manner and with the same effect as if this act had not been passed. (41 Stat. L. 298."

It being, therefore, conclusive that section 9 of the Act of Aug. 10, 1917, under which act the defendants were indicted, was repealed about six months before the alleged offense in violation of said act was committed, the demurrers should have been sustained and the defendants discharged.

We insist that the judgment should be reversed.

Respectfully submitted.

DAVIS, RUSH & MACDONALD,

ALLISON & DICKSON,

Attorneys for Plaintiffs in Error.